

REMARKS

Claim 1 has been amended. New claims 41-42 have been added. What is referred to herein as claim "40", although withdrawn, was inadvertently numbered as a second claim 39. Since it is a withdrawn claim, its status identifier cannot be "currently amended". Hence, no instructions for changing the numbering were employed for the claim. Rather, it is now listed as claim "40" whereas previously it was incorrectly listed as a second claim 39. No correction or notice from the USPTO was received concerning this typo. This is noted since new claims 41 and 42 have been added.

In the Office Action dated December 12, 2007, the examiner rejected claims 1-6, 12-20 and 26-35 under 35 U.S. C. section 103(a) as being unpatentable over Roberts (US5750141) in view of Glasser (US 3212970) in view of McCadden (US 6479 058), O'Kane (The Physician and sportsmedicine Sept. 1999 vol. 27(9) pp. 1-14 and Healthchemist (online pharmacy printout or Naphcon being sold).

Specifically, the examiner contends that "Glasser teaches the treatment of psoriasis comprising administering any antihistaminic compound, such as pheniramine maleate" and that "it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition to be used for that very purpose". In re Kerkhoven; In re Crockett; Ex parte Quadranti and In re Geiger.

It is respectfully submitted that the examiner misapplied the facts to the law. The claimed invention teaches a method of treating skin conditions by combining a corticosteroid in prescribed amounts with specific amounts of a decongestant (naphazoline HCL or phenylephrine HCL) and an antihistamine (pheniramine maleate).

The effect of the combination taught by the present invention does not produce merely expected results, but dramatic unexpected results. As stated on page 7, lines 10-16, of Applicant's patent specification the combination teaches a dramatic non-intuitive improvement in treating psoriasis and other conditions compared to corticosteroids alone:

The result is a dramatic alleviation of the symptoms of the condition and a dramatically increased effectiveness in comparison of the topical corticosteroid cream alone both in terms of degree of symptom alleviation and in terms of the speed of said symptom alleviation. Generally, the dermatological condition is remarkably alleviated in two to four minutes. In terms of speed, this is less than half the time, on average that it would take using a cream of hydrocortisone or other topical corticosteroid on the affected area alone.

Glasser states in column 1, lines 9-20:

The invention is based on my discovery that antihistamine compounds and diuretic compounds, when used in conjunction with each other, are capable of therapeutically alleviating psoriasis when a composition containing both compounds is internally administered to a person afflicted with the disease. I have found in all instances that the use of either compound alone has virtually no effect on the course of the disease, the combined use of an antihistamine compound and a diuretic compound exerts a unique antipsoriatic effect when both compounds are internally administered together to a psoriatic. (emphasis added)

Roberts teaches using vasoconstrictors such as naphazoline HCL or phenylephrine HCL specifically to increase transdermal penetration of therapeutic agents. Roberts is not addressing psoriasis at all, but rather the general issue of how to increase the rate of absorption of topically applied medications. Roberts teaches that vasoconstrictors such as decongestants can increase the speed of absorption of such topically applied medications. Roberts makes no mention of using an antihistamine and is explicitly unrelated to internal administration of medication.

Healthchemist (online pharmacy printout or Naphcon being sold) teaches the combination of naphazoline hydrochloride and pheniramine maleate for eyedrops only,

not for skin conditions.

Combining Glasser and Roberts is per se impossible since Glasser deals with internal administration and Roberts deals with increasing topical, transdermal penetration. For this reason, moreover, Glasser and Roberts are not examples of teaching two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition to be used for that very purpose.

Accordingly, the cases cited by the examiner are inapposite.

Furthermore, Glasser specifically teaches away from using antihistamines alone and cannot be used with Roberts for the examiner's stated proposition that "the idea of combining them flows logically from their having been individually taught in the prior art". Glasser does not teach using antihistamines individually for psoriasis. Glasser states that he found that antihistamines "in all instances" "have virtually no effect" on psoriasis and that such compounds are useless without diuretics when treating psoriasis. See Glasser, col. 1, lines 15-16.

In In re Kerkhoven, cited by the examiner, the rejected claims "require[d] no more than the mixing together of two conventional spray-dried detergents". 626 F.2d at 850 and in In re Crocker, 279 F.2d at 277, the rejected claim was found to be "an obvious combination of two old nodulizing materials". The claimed invention, in contrast, is not a case of saying fruits are good for antioxidants, vegetables are good for antioxidants, so try a mixture of fruits and vegetables. The individual elements are not taught in the prior art to be used alone and certainly not to be used alone for the same purpose.

In addition, claim 1 has been amended to recite that the method "relieves symptoms" of the dermatological conditions "within approximately two to approximately

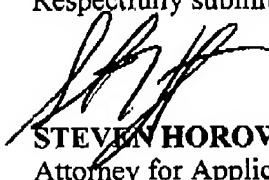
four minutes". This is supported by the specification at page 7, lines 10-16. This is dramatic and unexpected and not achieved or taught by the prior art. New claim 41 has been added to specify that the relieving of the symptoms involves alleviation of the symptoms. This is also supported by the specification at page 7, lines 1-2. New claim 42 has also been added to specify that the relieving of symptoms lasts for approximately two to approximately five hours. This is supported by the specification at page 7, lines 2-3.

It is respectfully requested that claims 1-6, 12-20, 26-35 and 41-42 are not taught by the combination of Glasser and Roberts in view of McCadden or the other prior art and are in condition for allowance. It is hereby requested that the above amendment be entered and that these claims be examined and allowed.

A credit card payment form (PTO-2038) authorizing payment of \$280, which includes \$50 for two new dependent claims (claims 41-42) and \$230 for a response within the second month, accompanies this Amendment.

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Respectfully submitted,



STEVEN HOROWITZ, ESQ.
Attorney for Applicants
Registration No. 31,768
295 Madison Avenue, Suite 700
New York, NY 10017
(212) 867-6800
(212) 685-6862 fax
sh@patentny.com